

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS
SAN ANTONIO DIVISION**

FILED

June 27, 2024

CLERK, U.S. DISTRICT COURT
WESTERN DISTRICT OF TEXAS

BY: NM
DEPUTY

CHRISTOPHER ROBINSON,

Plaintiff,

v.

**V. ESCORZA, K. GARZA, and
ALAMO HEIGHTS POLICE
DEPARTMENT,**

Defendants.

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CIVIL NO. SA-23-CV-00734-OLG

ORDER ON REPORT AND RECOMMENDATION

The Court has considered United States Magistrate Judge Henry J. Bemporad's Supplemental Report and Recommendation (Supplemental R&R), filed May 14, 2024, concerning the status of this case. (*See* Supp. R&R, Dkt. No. 23.)

On March 11, 2024, the Court accepted Judge Bemporad's initial R&R (*see* R&R, Dkt. No. 15), granting Defendants' motion to dismiss and instructing Plaintiff to file a motion for leave to amend his complaint within ten days of being served with a copy of the Order. (Dkt. No. 19.) Plaintiff was subsequently granted an extension of this deadline, making his motion for leave to amend due on or before April 29, 2024. (Dkt. No. 22.) Because Plaintiff has not moved for leave to amend his pleading, the Supplemental R&R recommends dismissal of his claims.

Any party who desires to object to a Magistrate Judge's findings and recommendations must serve and file specific written objections within fourteen days after being served with a copy of the findings and recommendations. FED. R. CIV. P. 72(b)(2). A copy of the Supplemental R&R was sent by certified mail on May 15, 2024, (*see* Dkt. No. 27), and received on May 18, 2024, (*see* Dkt. No. 28). To date, no objections have been filed.

Because no party has objected to the Magistrate Judge's findings or recommendations, the Court reviews the R&R for clear error. *See United States v. Wilson*, 864 F.2d 1219, 1221 (5th Cir. 1989); *cf.* 28 U.S.C. § 636(b)(1) ("A judge of the court shall make a de novo determination of those portions of the report or specified proposed findings or recommendations to which an objection is made.") After such review, the Court finds that the R&R is neither clearly erroneous nor contrary to law.

Accordingly, the Court **ACCEPTS IN PART** the Supplemental R&R and, for the reasons set forth therein, Plaintiff's claims against Defendants V. Escorza and K. Garza are **DISMISSED WITH PREJUDICE** for failure to state a claim. *See* FED. R. CIV. P. 12(b)(6).

The Court **MODIFIES IN PART** the Supplemental R&R as follows: Plaintiff's claims, if any, against Defendant Alamo Heights Police Department are **DISMISSED WITHOUT PREJUDICE** for failure to prosecute.¹ *See* FED. R. CIV. P. 41(b).

Any pending motions are **DISMISSED AS MOOT**.

This case is **CLOSED**.

It is so **ORDERED**.

SIGNED this 26 day of June, 2024.



ORLANDO L. GARCIA
United States District Judge

¹In the initial R&R, Plaintiff was instructed that, should he wish to assert claims against this unserved defendant, "he must also state claims as to the [Alamo Heights Police] Department and request issuance of a summons so that the Department may be served with process and respond." (Dkt. No. 15, at n.4.) Because Plaintiff did not move for leave to amend his complaint and, thus, has neither asserted a claim against nor served the Department, this dismissal will be without prejudice.